IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 504 OF 1993

Ranoba Vithal Belkar (deceased)
through his legal heirs and
representatives
1-A Narayan Ranoba Belkar & Ors ..Appellants

versus

The Special Land Acquisition
Officer & Anr. ..Respondents

Mr. Uday Warunjikar with Balasaheb Bandal and Pravin Mane for the Appellants.
Mr. B. R. Patil A.G.P. for the Respondents.

CORAM : D. G. DESHPANDE,J.

DATE : 13TH JANUARY,2005

ORAL ORDER :

1. Heard learned counsel for the appellants - claimants and the learned AGP for the State.

2. This Appeal is filed by the claimants for enhancement of the compensation awarded to them. The acquired land is 29 Hectares and 27 Ares and acquired from three different survey numbers of gat Nos. 844, 836 and 835 situate at Village Ane,

Taluka Parner, Dist : Ahmednagar. The Special Land Acquisition Officer on the basis of the assessment and comparative sales instances, namely, about 18 in numbers awarded compensation at Rs.2,000/- per hectare. Being aggrieved, the claimants made a reference and the court below relying upon the data referred to by the SLAO and the 18 sales instances, referred to in and average of Rs.3,521/= arrived at by the SLAO, the SLAO awarded Rs.3,500/= per hectare to the claimants. However, the claimants who are claiming Rs.12,000/= per hectare, have filed this appeal challenging the said order of the trial court.

3. Counsel for the appellants strenuously urged and contended that claimants have examined three persons and brought three sale instances on record. wherein the land was sold at Rs.30,000/= per hectare. He also relied upon Exhibit 32 which was the judgment in LAR No.183 of 1982 before the 2nd Joint Civil Judge, Senior Division, Ahmednagar where the claimants were Karbhari Krushna Andhale & Tulshiram Krushna Andhale vs. State of Maharashtra. He contended that the claimant has deposed in his evidence that this order in LAR No. 183 of 1982 was in respect of land which was only 8 kms. away from the land acquired of the claimant. According to learned counsel for the appellants the lower court

did not take this important and vital documents on record. He also pointed out that as per the evidence of the claimant there were 19 tals in the acquired land for which no compensation has been given by the lower court. He also stated that potentiality of the land and comparative assessment is also not taken into consideration. According to him therefore if the evidence of three witnesses and the three sale instances and the effect of Exhibit 32 are taken into consideration then the claimants will be entitled to Rs.30,000/= per hectare or if not Rs.30,000/= then something additional more than what is awarded by the court i.e. more than and above Rs.3,500/- per Hectare.

4. On the other hand learned AGP pointed out that the three sale instances are produced and proved by the claimants by their witnesses are in respect of bagayat land where the revenue assessment was more than the assessment of the acquired land and therefore the court below rightly did not consider those three sale instances. So far as Exhibit 32 is concerned, the learned AGP pointed out that firstly there is three years gap between the publication of notice under Section 4 of the Land Acquisition Act. In the present case it is 10.11.1977, whereas the notification which was in LAR no. 183 of 1982 was of 21.8.1980 i.e. three

years after the notification in the present case. He therefore submitted that three years difference would make a lot of difference because sale deeds of the relevant period in the present case would be nearabout 1977 and in LAR No. 183 OF 1982 they would be of 1980. He also pointed out that the portion of the land in LAR No. 183 of 1982 was Bagayat land and other portion was Pot Kharaba. Whereas in the present case no admission of the land as Bagayuat land. Therefore, according to him the rate of Rs.2,000/- Hectare granted in LAR No. 183 of 1982 would be of no use and cannot be of any help to the appellants.

5. Regarding the contention of the claimants that no compensation for 19 tals is given, the learned AGP pointed out that in his evidence the claimant has not given any particulars about the expenditure incurred by him for construction of 19 tals and no claim is specifically made, therefore it was on this ground the lower court did not consider the claim of the claimant. As against this, Mr. Warunjikar contended that if the existence of 19 tals is not disputed then atleast some compensation for those 19 tals giving judicial note of the expenses generally incurred should have been awarded.

6. Learned AGP also pointed out that in the operative part of the impugned judgment interest at the rate of 9% per annum on the initial award for first year and 15% per annum for remaining period as against the judgments of the Supreme Court because this was a matter prior to the amendment of Section 23-A. My attention in this regard was invited by the learned AGP to the judgment of the Supreme Court reported in **(2000)7 SCC 756 Krishi Utpadan Mandi Samiti vs. Kanhaiya Lal & others** where the acquisition was prior to the amendment and in paragraph 15 Supreme Court held the interest admissible of the respondent claimant would only be 6% as per unamended provision and the High Court granted interest @ 9% and 15% under the proviso of the amended section, cannot be sustained. So flat rate of 6% was granted.

7. Learned counsel for the appellants opposed submission of the learned AGP in this regard. Question therefore is whether the claimant is entitled for enhancement of compensation at the rate of Rs.30,000/= per hectare or whether he is entitled for enhancement at all.

8. It is true that the claimants had examined three witnesses and have proved three different sale instances. P.W. 2 examined by the claimant state

that he had purchased land gat No. 33/2 for Rs.3,000/=. It was 8 gunthas in area and the purchase was made from Jankibai and Ram Awachat. He produced certified copy of the sale deed at Exhibit 24, it was Jirayat land. A perusal of Exhibit 24 shows that oral evidence of the witness that the land was Jirayat is not correct, because the land itself is referred to as Makacba Wada and having an irrigation facility / dam and it is referred to as bagayat land. The evidence of this witness cannot be considered because firstly he has given evidence contradictory to the document and has tried to openly support the case of the appellant for enhancement. He has also stated that the land purchased by him Exhibit 24 was adjoining his land. Therefore it was natural for him to pay more price for purchased land.

9. Claimant examined P.W. 3 Bhau Maruti Gulawe. He had purchased land in 1976 for Rs.11,000/= and it was 35 gunthas. It is jirayat land. He has filed certified copy at Exhibit 29. Exhibit 29 is in respect of Survey No.12 0.70 Ares. Revenue Assessment 2.93 and Survey No. 18 0.35 Revenue assessment 1.47. It is also referred to as bagayat land with one unrepaired well. But there is one well in some other adjoining area Survey No.11/1 and right to get irrigation from the well is also

produced by him. This witness in his evidence as referred to above again contradicted himself by referring to this land as jirayat lande. Not only this but he has referred to the claimants land as bagayat land and he also stated that crops were being taken on the water of the river and the river water from well is also available. It is not supported by the claimants evidence, this clearly show that the witness is trying to help the claimants. However, he admitted that recitals in the sale deed Exhibit 29 do show that the land is bagayat land. For the aforesaid reasons the evidence of this witness is of no help to the claimants.

10. The third witness is also sailing in the same boat. He admits that water from the dam is available for the purpose of irrigation of his land, which he sold vide certified copy of agreement Exhibit 23.

11. It will be therefore clear that these three witnesses who have given evidence on behalf of the claimants have purchased bagayat land, the price of which is Rs.30,000/= per hectare. The claimants land is jirayat land that no facility of irrigation of any kind.

12. It will be therefore clear from the discussion and the evidentiary value of Exhibit 32 and three sale deeds that claimants does not get any support from these documents, but his contention is that he is entitled to Rs.30,000/= per hectare.

13. However as rightly argued by learned counsel for the appellants that if for bagayat land in the same village people were paying at the relevant time under Section 4, Rs.30,000/= per hectare then for Jirayat land very grant of compensation of Rs.3,500/= would be inappropriate. He also pointed out that for Pot Kharaba land in LAR NO. 183 of 1982 the court has granted Rs.2000/= and therefore if the land of the claimant was cultivable and they were using the same for agricultural purposes than Rs.3,500/- is not proper compensation.

14. However it is to be noted the land acquired under LAR No. 183 of 1982 was small in size i.e. 5 H 2 R., whereas the land acquired in the present case is 25 hectares. Size of the land acquired does make difference in the compensation.

15. I find considerable force in the submissions that the court has taken average Rs.3,500/= as found by the SLAO to be the basis enhancement of compensation. Considering the aforesaid factors and

particularly grant of Rs.2,000/- by the court at S.D.A. nagar, At Ahmednagar in Reference No.183 of 1982, the claimant, in my opinion would be entitled to Rs.6,000/= per hectare i.e. by addition of Rs.2,500/= per hectare. So far as 19 tals are concerned Mr. Warunjikar contended that some compensation though not specifically claimed should be granted. In my opinion Rs.1,000/- per tal would be sufficient. However while adding the aforesaid compensation to the claimants, the rate of interest granted by the court below will have to be brought down. I therefore pass the following order :

ORDER

Appeal is partly allowed.

. Claimant to get Rs.2,500/= more per hectare for the land acquired plus Rs.19,000/- compensation for 19 tals. However interest granted by the lower court is modified and the claimant will be entitled to 6% interest at flat rate from the date of its decision till realisation and proportionate costs of this appeal.

13.1.2005 (D.G. DESHPANDE,J.)